



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

CONGREGATION OF YETEV LEV,
 Petitioner,

v.

NEW JERSEY AMERICAN WATER COMPANY,
 Respondent.

) ORDER
) DENYING MOTION FOR
) RECONSIDERATION
)
)
) BPU DOCKET NO. WC08060418U
) OAL DOCKET NO. PUC 6417-08

(SERVICE LIST ATTACHED)

BY THE BOARD:

On April 27, 2009, the Board of Public Utilities ("Board") issued an Order adopting in part and modifying in part the Initial Decision of Administrative Law Judge ("ALJ") Douglas H. Hurd in this docket. On June 19, 2009, the Congregation of Yetev Lev ("Petitioner") filed a Motion for Reconsideration ("Motion") of the Board's April 27th Order. The April 27th Order adopted in part the Initial Decision of Administrative Law Judge ("ALJ") Douglas H. Hurd, which held that New Jersey American Water Company ("Respondent") billed Petitioner in accord with its Board-approved tariff and the applicable regulations and modified ALJ Hurd's Initial Decision to clarify that, although the Board has jurisdiction to investigate matters involving a regulated public utility, Petitioner's request for an investigation was denied based on the finding that an investigation into the water shut-off was unnecessary. Petitioner now requests that the Board reconsider its April 27th Order, because Petitioner claims to have misunderstood the agreement to limit the disputed issues to the allegations of an overcharge of sewer usage and an illegal shut-off.

Background and Procedural History

The Petitioner filed its initial petition on June 18, 2008, alleging an improper shut-off of water service on April 10, 2008; requesting a credit for the reconnection fee associated with that shut-off; requesting a credit for an overcharge of 156,000 gallons in sewer service beyond the water usage in the year 2006; requesting an investigation into the delayed response to Petitioner's request for an actual meter reading in 2005; and demanding an investigation by the Board to reveal the formula for calculating Respondent's estimated bills. Upon receipt of Respondent's Answer on July 29, 2008, the Board transmitted this matter to the Office of Administrative Law ("OAL") for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A.

52:14F-1 et seq. This case was assigned to ALJ Hurd, who held a hearing on January 26, 2009. ALJ Hurd submitted his Initial Decision in this matter to the Board on February 2, 2009. Petitioner submitted written exceptions dated February 13, 2009. Respondent replied to Petitioner's exceptions with a letter brief dated February 20, 2009. Petitioner then submitted a written response dated February 24, 2009. Pursuant to N.J.A.C. 1:1-18.8, the Board requested and the OAL granted an extension until May 4, 2009 in order to review the exceptions and issue a final decision. On April 27, 2008, the Board issued an Order adopting ALJ Hurd's Initial Decision in part and modifying it in part on. On May 15, 2009, Petitioner submitted a request to the Board for an extension of time to file a Motion for Reconsideration. On June 10, 2009, Petitioner made a second request for an additional extension of time to file the Motion. Respondent objected to Petitioner's June 10th request for an additional extension by letter dated June 16, 2009. Petitioner filed the Motion on June 19, 2009. Respondent replied to the Motion with a letter brief dated July 1, 2009.

Petitioner's Motion for Reconsideration

Following two extension requests, Petitioner filed the Motion in thirteen separately numbered paragraphs. Petitioner contends that its agreement to modify the petition and limit the disputed issues was based upon a misunderstanding, which Petitioner claims to have discussed with the ALJ during the hearing. Petitioner's Motion reiterates its previous requests for a credit equal to an alleged 156,000 gallon overcharge and for the use of an actual reading taken on January 4, 2006 rather than an estimate. Petitioner states that the Initial Decision primarily focuses on the alleged overcharge even though the low estimates and delayed actual meter readings were discussed at the hearing. Petitioner states that it filed exceptions to the Initial Decision contending that the estimates were done in violation of the tariff and quotes Respondent's reply. In addition, Petitioner quotes Respondent's Tariff Sheet and claims that it does not state that a per day usage estimate could be deemed as "actual." Petitioner alleges that Respondent used the term "actual" to account for what was a revised estimate. Petitioner also contends that Respondent violated the rules by failing to make reasonable efforts to read all meters and asks that the Board penalize Respondent for failing to perform a meter read. Petitioner also claims that Respondent violated its tariff sheet by failing to handle complaints promptly and failing to provide customers the option to give a customer reading to the utility when a meter is located in a meter pit. Petitioner concludes that the Initial Decision and Board's Order is in error and contrary to Respondent's approved tariffs. In light of the foregoing, Petitioner requests that the Board reconsider and reverse its decision by: (1) ordering that the January 4, 2006 reading replace the alleged December 2005 estimate and that Respondent credit the alleged overcharge; (2) ordering the investigation of Respondent's delayed response to Petitioner's requests; (3) ordering an investigation of the "mounting evidence of [Respondent's] practice of producing excessively low estimates for December"; and (4) ordering Respondent "to update its meters placed in a meter pit, with an option for a customer reading."

Respondent's Reply

Respondent, in its Reply, argues that Petitioner's Motion was untimely filed with the Board in violation of N.J.A.C. 14:1-8.6(a). In support of this position, Respondent states that Petitioner's first request for an extension to file a motion was not filed within 15 days and is in violation of N.J.A.C. 14:1-8.6(a). Ultimately, Petitioner's Motion for Reconsideration was filed over fifty days following the Board's Order adopting ALJ Hurd's Initial Decision.

Notwithstanding this alleged procedural defect, Respondent contends that Petitioner's Motion includes a reiteration of the law and the facts previously presented at the hearing, in the Petition, and in the written exceptions filed in this matter. As such, the Motion fails to allege any errors of law or fact relied upon by the Board. Respondent contends that Petitioner failed to seek reinstatement of the disputed issues at the appropriate time. Additionally, Respondent claims that the Motion raises a new legal argument related to an alleged tariff violation which was not previously articulated by Petitioner. Respondent argues that the new legal argument is unrelated to the current dispute regarding calculation of Petitioner's sewer usage charge. Respondent requests that the Board deny Petitioner's motion for reconsideration. Respondent further requests that the Board direct Petitioner to pay all outstanding, past due invoices owed to the Company.

Discussion and Findings

Under N.J.A.C. 14:1-8.6(a), a motion for reconsideration shall be filed with the Board within 15 days after the issuance of any final decision or Order by the Board. In this matter, the Board's Order was entered on April 27, 2009. Eighteen days later, Petitioner submitted a letter to the Board requesting an extension of 15 days "in order to have time for an attorney to review the case." On June 10, 2009, Petitioner requested an additional extension of time to file a motion. On June 16, 2009, Respondent filed its objection and, on June 19, 2009, Petitioner submitted the Motion for Reconsideration. Respondent again raised timeliness arguments in its letter brief filed July 1, 2009. Notwithstanding Respondent's concerns, the Board recognizes that the Petitioner appears *pro se* and has acted in good faith by filing letters with the Board requesting extensions. Therefore, pursuant to the Board's authority under N.J.A.C. 14:1-1.2, the Board relaxes the fifteen day filing requirement and HEREBY ACCEPTS Petitioner's filing as timely.

"The [B]oard at any time may . . . extend, revoke or modify any order made by it." N.J.S.A. 48:2-40; N.J.A.C. 14:1-8.6(b). However, a party should not seek reconsideration merely because of dissatisfaction with a decision. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). In other words, the party must demonstrate that the Board "acted in an arbitrary, capricious or unreasonable manner." D'Atria, *supra*, 242 N.J. Super. at 401.

Specifically, N.J.A.C. 14:1-8.6(a)(1) requires that a motion for reconsideration "state in separately numbered paragraphs the alleged errors of law or fact." Petitioner sets forth thirteen separately numbered paragraphs in its motion. Respondent argues that those paragraphs fail to allege errors of law, or facts not considered by the Board when it issued the April 27 Order.

Petitioner alleges that the agreement to limit the issues was based upon a misunderstanding. Petitioner claims he advised ALJ Hurd that English was not his primary language. (Petitioner's Motion for Reconsideration, at 2.) Respondent contends that Petitioner failed to object at the appropriate time, despite ALJ Hurd's reference to the agreement more than once during the hearing.¹ The Board regrets any misunderstandings that may have caused Petitioner to agree mistakenly to modify the Petition and to limit the issues to the over-charge of sewer usage and the illegal shut-off. The Board, however, reviewed and considered the record in this matter before rendering its decision on April 27, 2009. Notably, the Board made the following finding:

Although the Initial Decision states that Petitioner clarified its petition at the hearing . . . the issues raised in the petition were addressed at the hearing on January 26, 2009. Included in the discussion of the two issues ALJ Hurd identified were Petitioner's concerns about the delayed actual meter reading as well as its concerns about Respondent's estimated billing practices. Upon review of the record below, the Initial Decision, and the written exceptions, the Board HEREBY FINDS that the issues raised in the petition were fully addressed at the hearing and discussed in the Initial Decision.

[April 27th Order, at 3 (citations omitted).]

Therefore, despite Petitioner's claim, the Board HEREBY FINDS that Petitioner suffered no harm as a result of any possible misunderstanding.

Petitioner's Motion sets forth the same facts and allegations of delayed actual meter readings and improper estimated billing practices in paragraphs 3 - 6, 9 and 11 without stating any errors of law or fact. In addition, paragraph 10 of the Motion claims that Respondent estimated its bill for five billing periods, rather than four. As noted above, Petitioner's concerns about the delayed actual meter reading as well as its concerns about Respondent's estimated billing practices were fully addressed at the hearing and discussed in the Initial Decision, which was adopted by the Board in its April 27 Order. (Hr'g Tr. 30-35; 47-54.)

Petitioner claims in paragraphs 7 and 8 that Respondent improperly used "per day usage estimate[s]" that should not be deemed "actual." The Motion states the following:

¹ ALJ Hurd stated on the record that, immediately prior to the hearing in this matter, Petitioner and Respondent agreed that several issues raised in the Petition were settled. There is no method to verify the alleged misunderstanding because the agreement was made prior to going on the record.

[Respondent] is calling its revised estimate of a per day usage . . . an ACTUAL, thereby claiming that no estimates were used, and that any 'delay' in performing an actual meter read in December 2005 was rectified when [Respondent] billed [Petitioner] based on what it calls an actual read. In fact it's an estimate that's based on an October 2005 reading Therefore the 'delay' was not rectified with that revised estimate, as the per day water usage would have been much lower with an actual read taken in December 2005. The only way the 'delay' could be rectified at this point is by using the January 4, 2006 actual read in lieu of the revised December estimate.

Although Petitioner complains of the per-day usage estimate, that number is derived from the actual readings (October 2005 and January 2006). Daily averages are required, because the utility does not take daily meter readings for its customers. Furthermore, both ALJ Hurd and the Board reviewed Respondent's testimony that the December 2005 estimated bill did not form the basis of the 2006 sewer charges. ALJ Hurd found that Respondent's testimony "was persuasive and demonstrated that [Respondent] billed petitioner properly." (Initial Decision, at 4.) Despite its contentions, Petitioner makes no showing that the Board's April 27 Order is incorrect or irrational. Thus, the Board HEREBY FINDS that Petitioner's claim that Respondent used unreasonable, estimated billing practices to overcharge its account was addressed at the hearing and discussed in the Initial Decision adopted by the Board.

As Respondent concedes, Petitioner presents a new legal argument in paragraph 12 related to an alleged tariff violation. The Board's regulations state that "[w]here opportunity is . . . sought to introduce additional evidence, the evidence to be adduced shall be stated briefly together with reasons for failure to previously adduce said evidence." N.J.A.C. 14:1-8.6(a)(2). Petitioner claims that "having a meter in a meter pit without an option for a customer reading is in violation" of the Board-approved tariffs. Despite having knowledge of the location of its meter, Petitioner failed to raise this issue from the outset of this matter; it was not stated in Petitioner's petition. Additionally, Petitioner does not state the "reasons for failure to previously adduce said evidence." Ultimately, the new legal argument is unrelated to the current dispute regarding calculation of Petitioner's sewer usage charge.

The Board does not find that the arguments raised by Petitioner are sufficient to warrant reconsideration of the April 27 Order. With the exception of paragraph 12, Petitioner's allegations of error and incorrect conclusions are, essentially, reiterations of the arguments presented in the petition, at the hearing, and in the exceptions. Petitioner presents a new argument in paragraph 12 that Petitioner failed to raise at the hearing. Nothing in the substantive arguments presented now rise to a level that would convince the Board that the Order adopting the Initial Decision is fatally flawed or otherwise wrong.


In light of the foregoing, the Board HEREBY FINDS that Petitioner's Motion for Reconsideration is not substantiated; nothing in Petitioner's Motion warrants the Board's reconsideration of its decision in the April 27 Order. Accordingly, the Board HEREBY DENIES Petitioner's Motion for Reconsideration.

DATED: 7/31/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

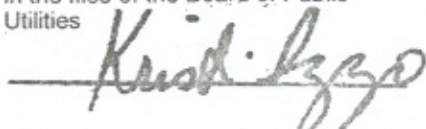

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



CONGREGATION OF YETEV LEV

v.

NEW JERSEY AMERICAN WATER COMPANY

**BPU DOCKET NO. WC08060418U
OAL DOCKET NO. PUC 6417-08**

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

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BOARD OF PUBLIC UTILITIES
NEWARK, NJ

INITIAL DECISION

OAL DKT. NO. PUC 6417-08

AGENCY DKT. NO. WC08060418U

CONGREGATION YETEV LEV,

Petitioner,

v.

**NEW JERSEY AMERICAN WATER
COMPANY,**

Respondent.

Zalmen Rottenberg, petitioner, pro se

Stacy A. Mitchell, Esq., for respondent (Conen O'Connor, attorneys)

Record Closed: January 26, 2009

Decided: February 2, 2009

BEFORE **DOUGLAS H. HURD**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner in this matter is Congregation Yetev Lev, a synagogue located in Lakewood. Petitioner filed a petition for a formal hearing, dated June 2, 2008. The petition was received by the Board of Public Utilities on June 18, 2008. The detailed petition claims, among other items, that New Jersey American Water ("NJAW") billed petitioner for excess sewer usage.

Respondent, NJAW, filed its response to the petition by letter dated July 24, 2008. NJAW explains that its sewer charge billing to petitioner was done in accordance with its Board-approved tariff rates. The Board of Public Utilities transferred the matter to the Office of Administrative Law, where it was filed on August 14, 2008. A hearing was held on January 26, 2009. Appearing on behalf of petitioner was Zalmen Rottenberg. He is in charge of the water/sewer account for the petitioner and authorized on its behalf to appear at the hearing.

Prior to the hearing beginning, Rottenberg clarified the issues he was seeking to have addressed. First, he was claiming that NJAW overbilled petitioner during 2006 for its sewer usage by 156,000 gallons. This translates into a charge of \$925.

Second, petitioner claims that NJAW improperly shut-off its water supply on April 10, 2008. Both parties agree that the water was shut-off for a matter of hours, and that petitioner was credited with the amount it had to pay for a reconnection fee. There was no monetary loss to petitioner. Petitioner stated at the hearing that he wanted an investigation as to why the petitioner's water was shut-off on April 10, 2008. Since I do not have jurisdiction to conduct such an investigation and because petitioner suffered no monetary loss from the shutting down of the water, I advised the parties that there were no issues for me to address regarding the water shut-off.

ISSUE

Did NJAW bill petitioner in accordance with its tariff and regulations for sewer usage in 2006?

ANALYSIS

NJAW relied upon the testimony of Lisa Attanasio, service delivery specialist, and documents R-1 through R-4. Petitioner relied upon the testimony of Rottenberg and documents P-1 through P-3.

NJAW's methodology for charging for sewer usage is provided in its Board-approved tariff. For the Lakewood service area, the tariff is listed in R-1. Although this document states it is effective February 14, 2008, there is no dispute that the methodology listed is the same as it was for 2006. The tariff provides as follows:

The volume of sewer use is assumed to equal water meter registration. Monthly sewer usage charges shall be determined based upon winter quarter consumption. Winter quarter consumption shall be determined based on an initial water meter reading taken in December of one year with the concluding meter reading taken approximately 90 days thereafter in March of the following year.

The April through December sewer volume charges are based on the total water volume usage for the months of January, February and March. Sewer water volume charges are based upon actual water usage volume for January, February and March. R-1.

Attanasio, with the aide of R-3, detailed how NJAW billed petitioner for the 2006 sewer usage. She explained that the billing was done in accordance with the stated tariff, and how the average 75 units for April through December 2006 was calculated. She also testified that petitioner was provided good faith credits totaling 45,000 gallons. These credits came off the 201,000 gallons that petitioner was disputing, leaving a dispute over the remaining 156,000 gallons. Petitioner agrees that he was in fact provided a credit for 45,000 gallons.

Rottenberg provided a detailed explanation of petitioner's claim. His case was consistent with the claims spelled out in the detailed petition filed with the Board of Public Utilities. In summary, petitioner claims it is unfair that his sewer bill for 2006 was

higher than for the water bill. Rottenberg claims it is impossible to use more sewer than water, and that typically there is less sewer usage than water usage when you take into account landscaping and similar activities. He contends that the water use calculated for January through March 2006 (which forms the basis for the sewer billing for the rest of the year) was inflated.

Having considered the parties arguments, the documentary evidence and the testimony of the witnesses, I conclude that NJAW billed petitioner in accordance with its Board-approved tariff and regulations. The testimony by Attanasio was persuasive and demonstrated that NJAW billed petitioner properly. Rottenberg did not like the fact that he paid more for sewer than for water in 2006, but the fact is that it was done in accordance with the tariff. Furthermore, the evidence showed that in 2007 he was billed significantly less for sewer than for water. This indicates that the tariff methodology sometimes may lead to a different result each year based on the actual water usage for the winter months.

Whether the methodology is fair is not the question before me. The question is whether the methodology in the tariff was followed. After a careful review of the evidence, I conclude that NJAW did in fact follow the Board approved tariff and regulations.

ORDER

Based on the foregoing, I hereby **ORDER** that petitioner's petition be **DISMISSED**. Petitioner is **ORDERED** to remit payment to NJAW for \$925, which equals the 156,000 gallons he was billed for in 2006.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

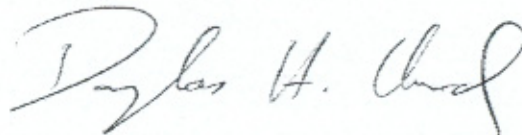
This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 2 Gateway Center, Newark, NJ 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

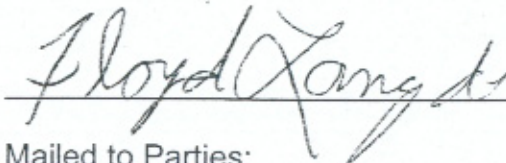
2-2-09

DATE

Date Received at Agency: 2-2-09



DOUGLAS H. HURD,, ALJ



Mailed to Parties:

DATE

/lam

OFFICE OF ADMINISTRATIVE LAW

WITNESSES

For petitioner:

Zalmen Rottenberg, representative from petitioner

For respondent:

Lisa Attanasio, Service Delivery Specialist

EXHIBITS

For petitioner:

- P-1 Tariff
- P-2 Rottenberg letter, with attachments
- P-3 NJAW Contact Information regarding petitioner

For respondent:

- R-1 Tariff
- R-2 N.J.A.C. 14:3-7.2
- R-3 Letter from Hoffman, dated June 22, 2006
- R-4 Usage Information Repot